UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

ASHFORD PRESBYTERIAN COMMUNITY HOSPITAL	**CASE NO. 12-CA-165682**
and	
FEDERACIÓN PUERTORRIQUEÑA DE TRABAJADORES (FPT)	

ASHFORD PRESBYTERIAN COMMUNITY HOSPITAL, INC.'s BRIEF IN SUPPORT OF ITS EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

In accordance with § 102.46 of the Rules and Regulations of the National Labor Relations Board, as amended, 29 CFR § 102.46, the undersigned attorney appears on behalf of Ashford Presbyterian Community Hospital ("the Hospital"); and files this Brief in Support of its Exceptions to the Decision of the Administrative Law Judge Geoffrey Carter ("ALJ"), dated April 6, 2017.

Additionally, the Hospital, in accordance with § 102.46(i), requests permission to oral argumentation in support of its Exceptions and Brief.

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A. PRELIMINARY STATEMENT

The ALJ ruled the Hospital modified its Collective Bargaining Agreements and made a unilateral change in the terms and conditions of its union employees without bargaining, when, on November 25, 2015, the Hospital sought an exemption from the payment of the 2015 Christmas Bonus to all its employees; was granted an exemption from payment of the Bonus; and, consequently, did not pay a bonus to its employees, including employees represented by the union Federación de Trabajadores Puertorriqueños ("FPT" or "the Union"). The ALJ supported his decision on two factors: (1) in the letter granting the exemption from payment of the Christmas Bonus, the Secretary of the Puerto Rico Department of Labor and Human Resources ("PRDOL" or "the Department") stated the exemption was only applicable to non-union employees; and therefore the Hospital did not have a sound, arguable basis to believe otherwise; and (2) even if the PRDOL had granted the Hospital's request for an exemption from payment of the bonus, the Hospital still had to bargain with the Union regarding the payment of the bonus. The ALJ's reasoning is incorrect.

Puerto Rico's Christmas Bonus Law, Law 148 of 1969, 29 LPRA § 501 et. seq., mandates a bonus be paid to most employees, excluding some specifically enumerated in the Law. The employees to whom the Christmas Bonus Law does not apply include independent contractors, persons employed in agricultural activities, domestic services, family residences, charitable institutions, or those employed by the Local or Federal Government, and public corporation and municipalities where the position or employment is by nature continuous or irregular. 29 LPRA § 515. Each December 15th, the bonus must be paid to all other employees who work 700 hours from October 1st of the year prior, to Sept 30th of the current year, a bonus equal to 6% of the salary earned during that year, up to a salary of $10,000.00.

However, Law 148 also allows employers who are not financially in the position to pay the Bonus to request exemption of payment for that year. The employer must request this from the Secretary of the PRDOL by November 30, 2015. The request must include an audited financial statement demonstrating the employer's finances. Based on these statements, the PRDOL can either approve the request or disapprove it.

In the case of the Hospital and FPT, the Collective Bargaining Agreements ("the CBAs") for each of the bargaining units represented by the Union make reference to a Christmas Bonus, including the amount to be given as a bonus each year, **and indicate all the provisions of Law 148 apply to the award of a bonus**. This includes the provisions regarding the payment date of the bonus; the provision indicating which employees have a right to the bonus (those that worked 700 hours); as well as the right of the employer to request the exemption from payment of the bonus when financial circumstances make it inappropriate to pay the bonus. When signing each of the CBAs, the Hospital specifically bargained to include all provisions of Law 148 in the event it would have to seek the exemption. None of the three CBAs state when the Hospital would have to pay the Christmas Bonus; do not state which employees qualify for the bonus; and do not provide for any penalties in the case of late or nonpayment.

In 2015, the Hospital sought exemption from paying the Christmas Bonus for all its employees by sending a request, along with audited financial statements, to the Secretary of the PRDOL. Even while the CBAs for FPT-represented employees indicated all provisions of Law 148 would apply to the issuance of a bonus, the Secretary, upon granting the exemption, did state it would only apply to the Hospital's non-union employees. In support of its statement, the Secretary cited to Article 6 of the Law 148, which indicates the law does not apply to employees who receive an annual bonus by their CBAs or individual work contracts; unless the amount to

be paid in the agreements or contracts is less than that mandated by the law, in which case the Law would apply to make up the difference. 29 LPRA § 506.

Article 6 serves to guarantee that, regardless of what the CBA or work contract states in relation to a bonus; all employees will at least get an annual bonus equivalent to 6% of that earned during the period contemplated by the Law, up to $10,000. Article 6 does not serve to exempt employers or employees with CBAs from the articles of the law. Thus, if an employer of union-represented employees is financially unable to responsibly pay the bonus, it can request (and receive) exemption from payment.

Notwithstanding, the ALJ found that since the Secretary had indicating the exemption granted to the Hospital did not apply to FPT-represented employees, the Hospital did not have a reasonable basis to believe it was exempt from these payments.

First: the Secretary of the PRDOL does not have the authority to go above the law and the CBA between the parties, and deny the exemption for FPT-represented employees. Second: The Secretary himself recognizes this. In addition to stating the exemption only applies to non-union employees, the Secretary also states that **the CBA is the law between the parties and what is provided in the CBA is subject to arbitration. The ALJ gives no importance to either of these statements; and places too much importance on a statement made based on an erroneous interpretation of Law 148 and Article 6 of the Law.** ***See Exception 11.*** **Third (and most importantly): Law 148 does apply to union employees.** In fact, Article 2 of Law 148, which sets the due date of December 15 for the payment of the Christmas Bonus, also contemplates and allows for CBAs and work agreements which extend the due date to a later date. 29 LPRA § 502. If the law did not apply to union employees (as the Secretary of the PRDOL erroneously concluded), Article 2 would be meaningless. The Board cannot conclude

from one sentence that the Hospital must pay a bonus for which it is financially-exempt under the Law.

However, the ALJ also finds that even if the PRDOL had not limited the granting of the exemption to non-union employees, the Hospital would still be required to bargain prior to not paying the bonus. The ALJ is wrong.

When the Hospital signed the CBAs for each of the Bargaining Units represented by the FPT, the Hospital specifically bargained and agreed all the pr

ovisions of Law 148 would apply to the issuance of a Christmas Bonus. Thus, the Bonus was always (in previous years) paid on December 15, notwithstanding the fact that the parties' CBAs say nothing about the date the bonus is to be paid. Additionally, in accordance with the law, the Hospital had always paid a bonus to those union employees who worked more than 700 hours in the period contemplated by the Law. Finally, during trial, the Hospital introduced evidence that in 2010, the Hospital's Human Resource Director chose to add more precision to the Christmas Bonus Article so that the Hospital could apply for the exemption if need be.

If the Hospital already bargained for the ability to apply for the exemption when it signed the CBAs, why does it have to bargain again? Requiring this places the Hospital in a position of having to begin negotiations regarding a Christmas Bonus every year, regardless of what its CBAs state; regardless of what the parties agreed to when they signed the CBA; and regardless of what the Secretary of the Department stated in respect to the request. This is not a rational interpretation of a law. Rather: **Every employer is obligated to pay a Christmas Bonus, unless they can demonstrate that financially, they are unable to. The ALJ, and the Board, cannot add to the law and require additional bargaining take place each year to discuss a Christmas Bonus.**

Finally, when the Hospital informed the Union on December 1st that it had requested the exemption, and invited the Union to discuss the matter, the Union did not take any steps to bargain. The ALJ interprets the Hospital's December 1st letter informing FPT of the request as a fait accompli: that the decision had already been made, and that therefore, the Union did not have to take any affirmative steps to bargain and could not be said to have waived bargaining. The ALJ also decides that on December 1, the Hospital informed its employees that the bonus would not be paid before informing the Union (evidence that the notice was a fait accompli).

However, the evidence demonstrated the Hospital simultaneously informed its supervisors and the Union; and the Union waived its rights bargain when it took no action to bargain after receiving this letter. The only attempt to discuss the matter on the part of the Union took place on December 11, 2015, after a bargaining meeting for employees of one of the units represented by the FPT. There, the Union requested, **for employees of that unit only,** that the Hospital make an initial payment of half the bonus amount by the 15th of that month; and the other half in January of the following year. The Hospital answered the Union's request and the parties reached an impasse. Under these circumstances, where there is a due date to make a request for exemption (November 30th), as well as a due date to pay the bonus (December 15th), negotiations cannot be dragged on for months. One meeting was sufficient for it to be obvious the parties would not reach an agreement.

In addition to the ALJ's erroneous Orders regarding the Hospital's ability to request an exemption from the payment of bonus to union employees, the ALJ also orders payment of the bonus, plus interest and adverse tax expenses, to individuals that were not part of the bargaining unit at the time the bonus was due. The Hospital's position on this is that these individuals were not part of the bargaining unit at the time the Bonus was due, and therefore only had rights under

Law 148 (not the CBA). However, the ALJ refuses to address this issue, ruling the Hospital did not answer the Compliance Specification with enough specificity to exclude those individuals.

First, the issue of payment to these individuals is an issue of liability, and therefore does not require the level of specificity required from answers to Compliance Specifications. Second, the Hospital did repeatedly state in its answers that the individuals listed only had rights under Law 148, the General Counsel questioned the Hospital's witness on this matter and thus had sufficient notice that the Hospital did not agree to the inclusion of the individuals not employed during December 2015. Further, in response to the last amended Compliance Specification included in the record, the Hospital "reserved the right to present its position regarding the names and amounts included in the Appendices [listing the employees and bonus amount due]." Finally, the Hospital had argued before the ALJ in response to the General Counsel's Motion to Strike that the ALJ could not order compensation to these individuals as they were not included in the bargaining unit at the time the Hospital allegedly failed to bargain; and the Hospital, in its last Answer to the Compliance Specification, listed lack of jurisdiction as an affirmative defense.

Finally, the ALJ erred in ordering the Hospital compensate for adverse tax consequences of receiving a lump-sum back pay award. The Regional Director specifically eliminated this form of compensation from the Compliance Specification a few days before trial. Therefore, the Regional Director did not give notice that the Hospital was liable for adverse tax consequences and the Hospital was not given the opportunity to present any arguments against it, either during trial or post-trial.

For all these reasons, the ALJ's decision should be revoked in full.

B. STATEMENT OF FACTS

Since 1983, the FPT has been the exclusive bargaining representative for three employee units at the Hospital: the Licensed Practical Nurses and Technicians (otherwise referred to as Unit A); the Clerks (otherwise referred to as Unit B) and the Auxiliary employees (Unit C). Joint Exhibit (Jt. Exh.) 1, ¶¶3-5. Since FPT began representing these Units, the union and the Hospital have an excellent relationship. Trial Transcript (TT) p. 102, l. 8-10. Ms. Irma Carrillo, the Hospital's Human Resource Director since 2003 (who had worked in that Department since 1995), has the telephone number of Mr. Edward Ufarry, the current Union President; Mr. Ramón Fuentes, the former President, and a currently active representative and spokesperson; and Mr. Marcos Cordero, an FPT representative and frequent visitor of the Hospital. TT at 29, l. 17-23; 62, l. 5-10; 102, l. 8-25; 103, l. 1-11. There had been no strike by the FPT in Carrillo's career with the Hospital. *Id.*

Historically, and since at least 2006, the CBAs for all three Units contained Articles pertaining to the issuance of Christmas Bonus in accordance with Puerto Rico's Christmas Bonus Law, Law 148 of 1969. Jt. Exh. 1, ¶¶ 7,9,12; R.Ex. 1-3. The Christmas Bonus Law, Law No. 148 of June 30, 1969, sets the date, and the conditions, under which a Christmas Bonus is issued; and **gives any employer subject to the law the option of obtaining an exemption from the Department of Labor and Human Resources by November 30 of the year the bonus is due, if, financially, it cannot pay the bonus**. Jt. Exh. 24(b); 29 L.P.R.A. § 501. Prior to 2010, the Christmas Bonus Articles in the CBAs all three units stated the amounts to be awarded as a bonus and stated that all conditions of Law 148 would apply:

Specifically, for Unit B employees, the CBA from 2006-2009 stated:

> SECTION 1: THE HOSPITAL will award to each employee covered by this agreement, a Christmas Bonus, pursuant to the following provisions:

- 2006 $425.00
- 2007 $475.00
- 2008 $600.00

All other conditions will be as provided by Law 148 of June 30, 1969, as amended. Hospital Exhibit (R.Ex.) 1.

For Unit A (LPN's and Technicians) from 2006-2009, the CBA stated:

SECTION 1: THE HOSPITAL will award a Christmas Bonus to each employee covered by this agreement, as follows:
First Year ... $525.00
Second Year...$550.00
Third Year... $600.00
and all else as provided, by Law Num. 148 of June 30, 1969, as amended. R. Ex. 2.

For Unit C (Auxiliary Personnel) from 2004-2008, the CBA stated:

SECTION 1: THE HOSPITAL will award a Christmas Bonus to each employee covered by this agreement, as follows:
1st Year 3.5% with a maximum limit of $10,000
2nd Year 3.6% with a maximum limit of $10,000
3rd Year 3.75% with a maximum limit of $10,000
4th Year 4.0% with a maximum limit of $10,000
And all remaining provisions, as provided by Law 148. R. Ex. 3.

When bargaining was taking place for the successor agreements for all three units, the Hospital specifically addressed the language of the Christmas Bonus articles and its desire to change it. TT at 109, l. 10-11. The Hospital proposed to change the language to include that **all the provisions of Law 148 to be applicable, which, in turn, includes the provision of the law that gives an employer that does not have sufficient earnings the right to request exemption from the payment of the Bonus**. TT at 115, l. 19-25; p. 116, l. 1-4. **The Union accepted the new language for the Christmas Bonus article and signed the three agreements.** *Id.* In summary, all the agreements, meaning the 2010-2013 agreement for Unit A; the 2010-2013 agreement for Unit B; and the 2011-2014 agreement for Unit C, provided that all the provisions of Law 148 would apply to the issuance of a Christmas Bonus.

For Unit A, the CBA for 2013-2016, this was in effect during December 2015, stated:

> SECTION I: During the term of this Agreement, the Hospital shall grant the Christmas Bonus to every employee covered by this Agreement, in accordance to the provision in Law 148 of June 30, 1969, as amended.
> Likewise, the other provisions of the before-mentioned law shall apply.
> SECTION 2: To those effects, the Hospital shall grant an annual Christmas Bonus to each employee covered by this Collective Bargaining Agreement:
> 2014- 6% of the annual salary up to the maximum of $10,000.00
> 2015- 6% of the annual salary up to the maximum of $10,000.00
> 2016- 6% of the annual salary up to the maximum of$10,000.00. Jt. Exh. 5(b).

The CBA for Unit B for the years 2010-2013, which was extended pursuant to a stipulation in effect during December 2015, stated:

> Section 1: During the term of this Agreement, the Hospital shall grant the Christmas Bonus to every employee covered by this Agreement, in accordance to the provision in Law 148 of June 30, 1969, as amended.
> Likewise, the other provisions of the before-mentioned law shall apply.
> SECTION 2: To those effects, the Hospital shall grant an annual Christmas Bonus to each employee covered by this Collective Bargaining Agreement:
> 2010- 6% of the annual salary up to the maximum of $10,000.00
> 2011 - 6% of the annual salary up to the maximum of $10,000.00
> 2012- 6% of the annual salary up to the maximum of $10,000.00. Jt. Exh. 7(b).

The CBA for Unit C for the years 2011-2014, which remained in effect until October 15, 2015, stated:

> Section 1: During the term of this Agreement, the Hospital shall grant the Christmas Bonus to every employee covered by this Agreement, in accordance to the provision in Law 148 of June 30, 1969, as amended.
> Likewise, the other provisions of the before-mentioned law shall apply.
> SECTION 2: To those effects, the Hospital shall grant an annual Christmas Bonus to each employee covered by this Collective Bargaining Agreement:
> 2011- 6% of the annual salary up to the maximum of $10,000.00
> 2012 - 6% of the annual salary up to the maximum of $10,000.00
> 2013- 6% of the annual salary up to the maximum of $10,000.00. Jt. Exh. 9(b); Jt. Exh. 1 ¶ 13.

In 2013, the parties signed a new agreement for Unit A, which extended until 2016, and also included a statement to the effect that all provisions of Unit A would apply to the Bonus. Specifically, the CBA for 2013-2016, which was in effect during December 2015, stated:

SECTION I: During the term of this Agreement, the Hospital shall grant the Christmas Bonus to every employee covered by this Agreement, in accordance to the provision in Law 148 of June 30, 1969, as amended.
Likewise, the other provisions of the before-mentioned law shall apply.
SECTION 2: To those effects, the Hospital shall grant an annual Christmas Bonus to each employee covered by this Collective Bargaining Agreement:
2014- 6% of the annual salary up to the maximum of $10,000.00
2015- 6% of the annual salary up to the maximum of $10,000.00
2016- 6% of the annual salary up to the maximum of $10,000.00. Jt. Exh. 5(b).

The Hospital's operations for the period of October 1, 2014 to September 30, 2015 resulted in a net loss of $993,411 for the Hospital, which is a non-profit corporation. General Counsel Exhibit (GC Exh.) 1(k), Motion for Summary Judgment ("MSJ"), Ex. 8. The Union was aware of the Hospital's financial situation, and had been provided all the financial information it had requested to verify the situation. TT at 73, l. 21-25; 74, l. 1-4; 78, l. 4-21; 109.

When the time came around for the Hospital to either request an exemption from payment of the Christmas Bonus, or pay the Christmas Bonus for 2015, the 2013-2016 CBA for Unit A was in force; the 2011-2014 CBA for Unit C was in force (extended by agreement); and the parties had not signed a new CBA for Unit B. TT at 31, l. 19-25; 32, l. 1.

On November 25, 2015, the Hospital chose to apply for the exemption from paying the 2015 Christmas Bonus, and, in support of its request, submitted to the PRDOL the financial documents required by the law. TT at 117, l. 19-25; 118, l. 1-9; GC Exh. 1(k), MSJ, Ex. 8. The Hospital made the decision to apply for the exemption based on the Hospital's financial statement, which showed an operational loss of $993,411; and the profit and loss statement. TT at 137, l. 9-14; GC Exh. 1(k), MSJ, Exh. 8. These documents were available for review by the Hospital on or around November 13, 2015. TT at 144, l. 17-25; 145, l. 1-2. Prior to receiving them, the Hospital did not know if it would be applying for the exemption. TT at 146, l. 9-14.

Once the exemption had been requested, Carrillo had to wait until the request for an exemption had been approved by the PRDOL before notifying the employees the exemption had been requested. TT at 122-123; 135-136. On November 30, 2015, Carrillo called the PRDOL to request the status of the exemption request. TT at 118, l. 13-25. A representative of the Department informed her that the exemption had been approved and the Hospital fulfilled all the requirements. *Id.* The representative also informed her that an official letter would go out in the mail and that the Hospital could notify the employees the Bonus would not be granted. *Id.*

On December 1, 2015, at a meeting that took place at 11:30am, Carrillo notified Hospital supervisors of the application for the exemption and requested the supervisors distribute a Memorandum to employees. TT at 52, l. 1-11; 113, l. 6-15. Simultaneously, the Hospital sent a letter to the Union President, Mr. Edward Ufarry, informing of the decision and attaching the Memorandum. TT at 33, l. 5-14. In the letter to Ufarry, Carrillo stated she was available to discuss the Hospital's decision to apply for the exemption. TT at 52, l. 12-25; 53, l. 1. In response, Ufarry sent a letter acknowledging Law 148 allows employers to seek exemptions, but complained the Hospital acted in bad faith by not notifying the Union beforehand. Jt. Exh. 14(b). He also stated the Hospital's decision to request the exemption came as a "surprise" to him. *Id.* However, **Ufarry was aware of the financial situation of the Hospital; and inclusive, he had the documents demonstrating the severity of the situation**. TT at 73, l. 21-25; 24, l. 1-4; 78 l. 4-21; 109. Carrillo never received a call from Ufarry regarding the payment of the Christmas Bonus, and Ufarry never requested a meeting to discuss the Christmas Bonus for any of the three Units his Union represented. TT at 119, l. 23-25; 120, l. 1; 121, l. 1-2; 142, l. 11-18.

Instead, Ufarry went straight to the PRDOL, bypassing the option of bargaining. He informed the Department via two letters (dated December 1st and 3rd) that the Hospital had

applied for the exemption, and the Union represented three bargaining Units at the Hospital, all of which had Agreements in effect. GC Exhs. 2(b) and 3(b); TT at 70, l. 16-23. Ufarry did not include the contents of the Christmas Bonus Articles of the Agreements in his letters. TT at 73, l. 7-15.

The Bureau of Labor Standards of the PRDOL responded to the December 3 letter. In its response, the Department cited to Article 6 of Law 148, which states the law would not apply where "employees receive an annual bonus by collective agreement", except where the amount to be paid is lower than that provided in the law, in which case they would receive what is necessary to make up for the deficit. Jt. Exh. 17(b). Based on this citation, the Department concluded the exemption granted would only apply to employees not belonging to the appropriate unit, and "[i]n cases where workers receive annual bonuses through CBAs, the agreement will be the law between the parties." Jt. Exh. 17(b).

Ufarry attached the letter from the PRDOL to a letter addressed to Carrillo dated December 4, 2015; and declared the Hospital had to comply with what the parties had agreed to in their CBAs. Jt. Exh. 16(b). Carrillo wrote back to Ufarry on that same date, referencing the letter from the Department and informing **that the letter stated the CBAs are the law between the parties**. Jt. Exh. 19(b). Since the parties had agreed the bonus would be subject to the entirety of the law, this granted the Hospital the right to request an exemption if eligible. *Id.*

The Hospital also attached a letter it had sent to the Secretary of PRDOL. In this letter, the Hospital **notified the Department of the exact language in each of the CBAs signed with FPT**, citing directly to the Christmas Bonus articles of each CBA. Jt. Exh. 18(b). On that same date, December 4, 2015, the parties had a bargaining session scheduled for the Unit B. Ufarry cancelled this session. TT at 120, l. 13-25.

On December 7, the Hospital received two letters from the Christmas Bonus Division of the Bureau of Labor Standards of the PRDOL: one stating that the exemption had been preliminarily granted, and the other stating the exemption would only apply to non-union employees. TT at 39, l. 9-21; 48, l. 10-23;49, l. 1-11; Jt. Ex. 11(b) and 15(b). **These letters were dated November 30 and December 2, 2015, prior to the Department having seen Carrillo's December 4, 2015 letter including the exact language of the Christmas Bonus article of the CBAs**. The letter received on December 7 requested the Hospital fill out a "Request of Statement of Exemption of the Christmas Bonus with Exhibits A and B." The Hospital filled this out and sent it to the Department; nowhere in the Request of Statement of Exemption does the PRDOL ask if the employer has union-represented employees. GC Exh. 1(k), MSJ, Ex. 8.

Ufarry brought up the 2015 Christmas Bonus to Carrillo only once in person. On December 11, 2015, after a bargaining session for a new CBA for Unit B had ended, Ufarry proposed to Carrillo that the Hospital agree to pay the Bonus for that unit in two equal parts: one due on December 15th, and one due in January 2016. TT at 110, l. 1-7. The Hospital answered that it was not accepting the offer because it was made after a bargaining session had just ended. Carrillo told Ufarry it was unfortunate he had not made the proposal earlier, during the bargaining session, TT at 110, l. 1-7; 142, l. 11-14. In person, Ufarry never brought up the Bonus in respect to either Units A or C.

On December 14, the Hospital received an email from the PRDOL attaching a letter dated December 11, 2015. TT at 55, l. 16-25; Jt. Exh. 23(b). The December 11 communication responds to the December 4 letter sent by the Hospital (which cites directly to the Christmas Bonus articles), and states that as to the matter of the CBA, the Bureau of Labor Standards of the Department has no jurisdiction and what was stated would be a matter for arbitration to be filed

with the appropriate forum. *Id.* On December 11, the Department had published a bulletin including all the names and location of all the corporations which had filed for an exemption. The bulletin shows the Department approved the Hospital's request. Brief, Exh. 1. (Attached here as Exhibit I)[1].

The Hospital did not respond to the December 11 letter because the PRDOL had specifically stated it had no jurisdiction over the matter and that it was an issue for arbitration. TT at 119, l. 14-25; 143, l. 16-22. For the same reasons, after receipt of the December 11 letter from the Department, the Hospital did not request to reopen bargain with the Union over the issuance of the Bonus. TT at 129, l. 19-22; 130, l. 1-6. Furthermore, Union employees **did** file grievances with the Bureau of Arbitration and Negotiation of the PRDOL in relation to the non-payment of the Christmas Bonus'. TT at 81, l. 1-25; 82, l. 1-23.[2] Effectively, on December 15, 2015 the Hospital did not pay the Bonus to any of the employees. Jt. Exh. 1, ¶ 30.

Regarding the rights of past union employees that have either resigned or been terminated, the established past practice of the Hospital is that employees that resign or are terminated are no longer covered by the CBA for the unit they belonged to during employment; former employees resign to the benefits they received as union-represented employees. TT at 114, l. 18-25; 115, l. 1-5. Accordingly, the right to a Christmas Bonus of any past employee no

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[1] The full bulletin is attached as an Exhibit to the Hospital's Opposition to the General Counsel's Motion to Strike. This forum can take judicial notice of the official publications of the Puerto Rico Department of Labor's list of exempt employers at any time during the proceedings, and take notice the Hospital is included in the list. *Comcast Cablevision of Philadelphia,* 1996 NLRB LEXIS 2; *See also, In the matter of Armour and Co. of Delaware,* 49 NLRB 1137, 1138 n.2 (taking judicial notice of prices published by the federal Department of Labor); *Chemical Leaman Tank Lines*, 251 NLRB 1058, 1063 (1980) (taking judicial notice of a regulation of a federal agency).

[2] The Hospital's response to these filings is that the grievance steps in the CBAs were not followed according to form, and so the controversy was not arbitrable. TT at 140, l. 1-25.

longer employed on December 15 of any given year is in accordance with Law 148. TT 1/27/17, p. 141, l. 13-25; p. 142, l. 1-10.

On December 7, 2015, the Union filed its charge against the Hospital. The Regional Director filed a Complaint and Compliance Specification on April 29, 2016. GC Exh. 1(a) & (e). Essentially, the Complaint filed by the Region asserts the Hospital violated the Section 8(a)(1) and (5) of the Act by not paying the 2015 Christmas Bonus to union employees represented by FPT; and by failing and refusing to bargain with the Union prior to not paying the Bonus. The Compliance Specification requested backpay, interest, and an amount due for adverse tax consequences. It also included an Appendix with a list of employees and a backpay amount for each. On July 12, 2016, the Regional Director filed an Amendment to the Complaint, adding that Section 8(d) of the Act was also violated. *Id.* at 1(q).

On July 18, 2016, the Hospital filed a Motion for Summary Judgment, alleging no controversy of material facts existed, and the Board could decide the validity of the Complaint's allegations without a trial. *Id.* at 1(k). The Regional Director opposed the Motion for Summary Judgment, arguing there are genuine issues of material fact, including credibility issues, as well as genuine issues of law, that are best resolved by a hearing. Additionally, the Regional Director asserted the documents attached to the Hospital's Motion for Summary Judgment could not be considered as true "evidence," and, instead were select, self-serving and unauthenticated. The Board denied the Motion for Summary Judgment on October 20, 2016. *Id.* at 1(w). Most of the documents used as exhibits in the Motion for Summary Judgment later made up the Joint Exhibits used at trial.

On January 20, 2017, the Regional Director amended the Compliance Specification to exclude damages from adverse tax consequences, and to limit damages to the amount of 6% of

the total salary up for a salary of $10,000 for any employee that worked 700 hours or more during October 1, 2014 through September 30, 2015, as well as any interest incurred up until the date of payment. *Id.* at 1(y). The Hospital timely filed an Answer. *Id.* at 1(aa).

The hearing took place on January 26 and 27, 2017. During trial it came to light that the General Counsel believed individuals no longer employed during the month of December 2015 still had a right to a Christmas Bonus for that year because they were working at some point during the period counted toward computing whether a bonus is due, even though they were not employed the month the bonus was due (and therefore did not belong to the bargaining unit). Thus, for purposes of amending the Compliance Specification, the Hospital provided the General Counsel with four lists: one for Unit A, one for Unit B, one for Unit C, and one for those individuals from all three units that worked at some point during the Christmas Bonus period, but who were unemployed on December 2015. However, the Hospital's position of a payment of the bonus to these former employees is that they only had a right in 2015 to a bonus under Law 148, and the Hospital had been granted an exemption from payment.

The second day of the hearing, the General Counsel moved to amend the Compliance Specification to update the Appendix to its Compliance Specification that listed the union employees and the damages amounts. GC Exh. 12. The final list of employees includes employees from all three units, who worked at least 700 hours between October 1, 2014 and September 30, 2015, including 22 individuals who were not actively employed by the Hospital on December 15, 2015 and therefore were not covered by the CBA or any other stipulation agreed to by the parties. *See, Individuals listed at Decision at 20, l. 43-48; 21, l. 1-4.*

The Hospital responded to the new motion by stating that it reserved the right to verify the employees listed in the Appendix. TT at 97-98. During trial, both the General Counsel and

the Hospital questioned witness Carrillo regarding the practice of the Hospital regarding paying the bonus to employees who were no longer employed by December of any given year. **Inclusive, the General Counsel specifically questioned Carrillo as to whether employees of the Hospital will receive the Bonus under Law No. 148 if they fulfill the requirements of the law, even if they are not an employee come December.** ***Id.*** **at 125, l. 8-13.**

On February 16, 2017, the General Counsel filed a Motion with the ALJ to accept the amended Compliance Specification into evidence and to close the record. The General Counsel contacted the Hospital beforehand to address any opposition to this motion. The Hospital responded that it **"reserved the right to present its position regarding the names and amounts included in the Appendices."** *See,* General Counsel's Motion for the Receipt of GC Exhibit 12 in Evidence and Close Record.

The parties next filed Post-Trial Briefs. Included with its brief, the Hospital attached a revised version of a document that had been translated and presented at trial: the Regulation of the Secretary of the PRDOL to Administer Law No. 148 of June 30, 1969, as amended, known as the Christmas Bonus Law in the Private Enterprise, Third Edition (2010), Regulation No. 7904.[3] Jt. Exh 25. The General Counsel did not oppose the inclusion of the document. The Hospital also included a list of employers that had been exempt from the payment of the 2015 Christmas Bonus and requested the ALJ take judicial notice of the list. This list was published by the PRDOL and the Hospital was included as an exempt employer.[4] Finally, the Hospital also drafted a Section arguing that the individuals no longer employed by the Hospital by December

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[3] The ALJ erred in declining to rely on the more accurate translation of this Regulation included in the Hospital's Post-Trial Brief. *Exception 1.*

[4] The ALJ erred in declining to take judicial notice of this publicly-available document. *Comcast of Philadelphia*, 1996 NLRB LEXIS 2; *In the matter of Armour and Co. of Delaware*, 49 NLRB 1137, 1138 n. 2. *Exception 4.*

2015 did not enjoy the benefits of the CBA and only had a right to a bonus under Law 148, for which the Hospital was exempt.

On March 28, 2017, the General Counsel filed a Motion to Strike the document published by the PRDOL demonstrating the Hospital had been granted the exemption. The General Counsel argued the list was not complete, and not translated, and had not been presented in trial. The Hospital opposed the Motion to Strike and attached the complete version of the document, and translated the page where the Hospital is listed as exempt from payment of the bonus. The Hospital also argued that the ALJ could take judicial notice of the document at any moment, and the document did not have to enter the record during trial.

The General Counsel also motioned to strike the section of the Hospital's Post-Trial Brief arguing individuals not employed by December 2015 only have a right to a Christmas Bonus under Law 148, and the Hospital had been exempt from that payment. The Hospital argued these individuals did not have rights under the CBAs.

The ALJ issued his decision on April 6, 2017; and ordered back pay, plus interest, and that the Hospital compensate for the adverse tax consequences. In respect to the Motion to Strike filed by the General Counsel, the ALJ refused to take judicial notice of the document published by the PRDOL. While the ALJ declined to strike the Hospitals' argument regarding the employees not employed during December 2015, the ALJ ruled the Employer could not question the inclusion of these employees because it had not given sufficient notice in its answer that one of its defenses to the Compliance Specification was that the employees listed were not employees at the time the bonus was due.

On April 26, 2017, the Hospital requested an Extension of Time to File Exceptions to the ALJ's Exceptions. This Request was granted by the Executive Secretary. On May 17th, the Hospital filed another extension of time, which was granted. The Exceptions are due today.

C. DISCUSSION

I. THE ALJ ERRED IN FINDING THE HOSPITAL WAS OBLIGATED TO REOPEN BARGAINING WITH THE UNION PRIOR TO NOT PAYING THE CHRISTMAS BONUS. *EXCEPTIONS 2, 8, 20, 27*

The ALJ determined that even if the Hospital had been granted an exemption from payment of the bonus, the Hospital (regardless) had to bargain over the decision to not pay a Christmas Bonus. In so finding, the ALJ does not recognize that in 2010, the parties had already bargained and agreed all provisions of Law 148 would apply to the issuance of a bonus. During trial, the Hospital testified that it specifically requested the Christmas Bonus Article of each of its CBAs include language to the effect that all provisions of Law 148 would apply; and that the Hospital wanted the CBAs to include this language so that the Employer could request an exemption. The ALJ does not consider that, under Puerto Rico contract law, the parties must conform to what they agree to, as well as what follows as a natural result of the agreement. Therefore, bargaining already took place and the parties had agreed the bonus would be paid under Law 148—and in accordance with all its provisions. Additionally, the ALJ errs in deciding this case requires the same conclusion as *Hosp. Santa Rosa Inc.*, 12-CA-143221 (Jan. 3, 2017) (where the Board found an employer had made a unilateral change in respect to a Christmas Bonus without fully bargaining with the Union); and errs in refusing to follow the Puerto Rico Court of Appeals' interpretation of the Christmas Bonus Law and how its provisions apply to union employees.

i. **An employee's Christmas Bonus up to 6% of the employee's wage, up to a wage of $10,000, is subject to Law 148 (including the provision allowing for an exemption) even if the employee belongs to a collective bargaining unit.** ***Exception 27.***

In *El Vocero v. Unión de Periodistas de Artes Gráficas y Ramas Anexas*, KLAN201100327, 2012 P.R. App. LEXIS 2783 (PR App. Ct. August 30, 2012), attached as Exhibit II), the Bureau of Arbitration and Conciliation of the PRDOL concluded an Employer violated the CBA it had with a Union by paying a Christmas bonus after December 15th. The Bureau noted: (1) The parties did not agree to another date for the payment, (2) the Employer did not seek the exemption provided by Law 148, *id.* at *7; and it was therefore "appropriate to issue a determination in accordance with the provisions of the Law." According to the Bureau: **"When there are legal provisions in the public interest, such as the Christmas Bonus, the contracts have to comply with them."**

The Employer requested judicial revision of the Bureau's decision before the Puerto Rico Court of First Instance, arguing that since the Bonus was paid in accordance with the CBA, the provisions of Law 148 did not apply, and the Bonus did not need to be paid by Dec. 15th. In support of its argument, the employer cited to Article 6 of Law 148, referenced earlier, states:

> The provisions of this chapter shall not apply in cases where the workers or employees receive an annual bonus by collective agreement, except in the event where the amount of the bonus to which entitled by such collective agreements may result lower than the one provided by this chapter in which case they shall receive the necessary amount to complete the bonus provided hereby." 29 L.P.R.A. § 506.

Rejecting the Employer's theory, the Court of First Instance affirmed the arbitrator's decision, stating, in its Judgement, that:

> **Art. 6 of the Christmas Bonus Law... clearly refers to an annual bonus distinct or additional to the Christmas bonus required by current labor legislation.** [The employer] did not argue that its employees received an annual bonus, agreed to in the collective bargaining agreement, distinct from the

> Christmas bonus. **The exemption of Art. 6 of the Christmas Bonus Act, supra, does not cover them**... (original emphasis removed and emphasis added.)

When the case was appealed, the PR Court of Appeals proceeded to affirm the Court of First Instance and the arbitrator's decision. In footnote 59, **the Court of Appeals actually characterized the argument that Law 148 did not apply to union employees as "radical":**

> The Appellant does not support his radical interpretation of Act No. 148-1969 – that in cases where the parties have established the Christmas bonus in the Collective Bargaining Agreement, the remedy does not apply - in any authority. In addition, an interpretation that could favor him, considers that in cases of Collective Bargaining Agreements, Act No. 148-1969 applies additionally, and that as for the payment of the bonus in cases of economic problems of the employer "**would have to resort to the language of the agreement**", which in the case before our consideration establishes the adjudication of disputes through the remedy of recourse to arbitration, which was precisely what happened in this case. *See,* L. Pabón Roca, op. cit., p. 20-21 and 46 (emphasis added).

Thus, both the Bureau of Arbitration of the PRDOL, as well as the Court of First Instance, agreed the "bonus contemplated by agreement" referenced in Article 6 of the Law, whether the agreement be a CBA or otherwise, **constitutes a bonus that is in addition to and different** than that contemplated by Law 148.

The ALJ mentioned that if the Hospital had desired to include a provision that allowed them to apply for the exemption (regardless of what the PRDOL provided) and regardless of whether the parties had bargained for nonpayment of the Bonus, the CBAs should have stated exactly this. However, in making this statement, the ALJ ignored uncontroverted testimony that in 2010, the Hospital specifically bargained for the entirety of the law of be included, with the intention of requesting the exemption on any given year should it be necessary; and the CBAs do expressly state all the provisions of the law would apply to the Bonus. The General Counsel did not present any evidence to negate this, notwithstanding the availability of the Union's President for testimony.

Additionally, the ALJ fails to explain why certain provisions of the Law (such as the requisite number of hours required to work to have a right the bonus; or the date the bonus should be paid), apply automatically to the issuance of a Bonus, but why other provisions, such as the ability to be exempt from payment upon following the procedure in the Law, do not apply automatically, and require reopening of bargaining over the Article. **The parties must conform to what they expressly agreed to, as well as what naturally follows as a result of applying the law**. Articles 1206 and 1210 of the Civil Code of Puerto Rico, 31 L.P.R.A. §§ 3371 & 3375. **Either the law applies in its totality or it does not apply at all**. If it does not apply, the Hospital does not owe back pay, or interest compounded daily. *Exception 21.*

As for the letters issued by the Secretary of the PRDOL's asserting that the exemption does not apply to union employees, this assertion is simply wrong, and in direct contrast with what the Court of Appeals decided in *El Vocero*. The employees in *El Vocero* were union employees, and their employer was arguing the law did not apply to them, and that the Bonus did not need to be paid by the mandated date of December 15. The courts and the arbitration forum found otherwise: while the employees were part of a collective bargaining unit, the actual bonus was as paid in accordance with the Law, and therefore the entirety of the law applied. If the CBA states that the Bonus to be paid is in accordance with the law, and must be paid by December 15th; and paid to those employees that worked 700 hours; and equal to 6% of the salary up to a limit of $10,000; then the **Law must be applied in its totality—even if it's being applied to union employees with a CBA.**

Aside from the Secretary's lone statement in the letter to the Hospital granting the exemption, nothing else issued or published by the Office of the PRDOL points to, or gives any notice of, the Bonus not applying to union employees. The Request for Statement of Exemption

from the Christmas Bonus that the Hospital filled out upon request from the Secretary did not include any reference to CBAs, and did not ask whether employees were represented by a labor organization. GC Exh., 1(k), MSG, Exh 8. And the Regulation enacted by the Secretary for implementation of Law 148, Regulation No. 7904, does not make any reference to the law or the exemption not applying in the case of union employees. Finally, the Court of Appeals has decided the law in its entirety **does apply**, and that is what the Hospital had bargained for.

ii. The ALJ erred in not applying Puerto Rico law to its ruling. *Exception 9.*

The ALJ refused to consider *El Vocero* in making its decision that the Hospital had failed to bargain; and also refused to apply Puerto Rico contract law to its decision. In so doing, the ALJ overlooked that the CBAs of the FPT represented employees already allowed for the Hospital to seek and obtain exemption from the bonus, and this, in turn, allowed the Hospital to not pay the bonus without any further bargaining.

Federal forums must "recognize their 'duty... in every case to ascertain from all the available data what the state law is." *Equitable Life Assurance Society*, 343 N.L.R.B. 438 (2004). This includes "decisions by intermediate appellate courts [which] should figure in the equation used to determine 'state law' unless the federal forum *'is convinced by other persuasive data that the highest court of the state would decide otherwise.'*" *Id.* at 445-46 (emphasis in original).

Thus, "[w]hen interpreting state law, federal courts are bound by decisions of the state's highest court." *Equitable Life*, 343 N.L.R.B. at 445. In the absence of such a decision, a federal court must predict how the highest state court would decide the issue using intermediate appellate court decisions, decisions from other jurisdictions, statutes, treatises, and restatements as guidance." *Id.* "Where there is no convincing evidence that the state supreme court would

decide differently, "a federal court is obligated to follow the decisions of the state's intermediate appellate courts." *Id. See also, New Bedford, Woods Hole*, 127 N.L.R.B. 1322, 1325 (1960).

Puerto Rico courts concur that even though a CBA is executed and adhered to in a field governed by special laws, different from those under which usual contracts are executed, and even though a CBA serves the specific function of governing labor-management relations, this does not make it any more or less of a contract, and, accordingly, governed by the dispositions of the Civil Code, unless Puerto Rico law states differently. *Luce y Co, supra*, 86 D.P.R. 425, 1962 P.R. Sup. LEXIS 362, *19-20 (1962); accord *FSE v. IRT*, 111 D.P.R. 520 (1981); *CFSE v. Unión de Médicos*, 170 D.P.R. 443, 980 (2007).

Accordingly, the norms of contract interpretation as regulated by the Civil Code apply to CBAs. *C.F.S.E.*, 170 D.P.R. at 450. Their terms are to be applied as written when they are clear, in other words, not subject to doubt, controversy, or interpretation. 31 L.P.R.A. § 3471; *CFSE*, 170 D.P.R. at 450; *Sucesión Ramírez v. Tribunal Superior*, 81 D.P.R. 357 (1959).

On the other hand, when the issue is determining the intention of either of the parties, all provisions of the contract should be read in a manner where they complement each other and the conclusion is what logically appears to be the intention of the parties when contracting. *FSE, supra,* 111 D.P.R. 520. Contract interpretation should not lead to incorrect, absurd or unjust results. 31 L.P.R.A. § 3471; *SLG Irizarry v. SLG García*, 155 D.P.R. 713, 725-26 (2001). In interpreting CBAs in connection with unfair labor practice determinations, the actual intent of the parties is given controlling weight. *Trane P.R. Inc.*, 2015 N.L.R.B. LEXIS 760, *19 (Oct. 15, 2015). To determine intent, the Board looks first to the language of the contract, then to relevant extrinsic evidence, such as past practice or bargaining history. *Mining Specialists*, 314 N.L.R.B. 268, 268-269 (1994).

The Hospital and the FPT specifically agreed and bargained to incorporate all the provisions of the law into their contract. Further, when negotiating the agreement on or around 2010, the Hospital's bargaining representative Carrillo specifically proposed to change the language of the agreement. The parties ultimately signed to the proposal, and signed to language the Hospital understood gave her the right to seek the exemption. While it is true the CBAs do not expressly state the Hospital had the right to seek the exemption, they do not state the Hospital has to pay the Bonus by a certain date, and they do not state which employees qualify for a bonus. A clear reading of the Christmas Bonus Articles of the CBAs incorporate the provision of Law 148 which allows the employer to seek the exemption when it meets the financial requirements determined by the Law.

El Vocero specifically states that an employer of Union-represented employees can request an exemption. In 2010, the Hospital bargained for a Collective Bargaining Agreement that would allow them to obtain that exemption. The Hospital was not changing a term or condition of employment because the condition already existed; the Hospital was simply choosing to act on its option of applying for the exemption.

iii. The ALJ erred in applying the Board's ruling in *Hosp. Santa Rosa Inc.*, supra, to this case. *Exceptions 13 and 14.*

The ALJ chose not to follow the reasoning of El Vocero (which would lead to a conclusion that the provisions of Law 148 (including that of seeking the exemption) automatically applied to union-represented employees, and required no additional bargaining. The ALJ also chose not to apply the provisions of Puerto Rico's Civil Code to the contract and acknowledging Law 148 was already fully incorporated in the CBAs and no further bargaining regarding the bonus was required prior to filing for an exemption from payment. Instead, the ALJ depends on Board cases to solve the dispute, and specifically, *Hosp. Santa Rosa, Inc.*, supra.

In *Hosp. Santa Rosa Inc.*, 12-CA-143221 (Jan. 3, 2017), the Board ruled an Employer violated Section 8(a)(5) and (1) by declaring an impasse and failing to bargain with a Union regarding the non-payment of a 2014 Christmas Bonus, when no such impasse had been reached. Notwithstanding, in that case, there was no Christmas Bonus Article agreed to by the parties, much less an agreement that all the provisions of Law 148 would apply to the bonus. Instead, the employer had always paid a Christmas bonus in accordance with past practice, and the Employer had not sufficiently bargained with the Union before declaring impasse and unilaterally deciding not to pay the Bonus.

Additionally, in *Hosp. Santa Rosa*, when the employer informed the Union it would bargain over the non-payment of the Bonus, the Union agreed to negotiate the non-payment of the bonus and requested a proposal. The parties met twice to negotiate. However, a few days before the Christmas Bonus was due, the Employer declared impasse and did not pay the bonus. The Board determined an impasse was not reached because the Hospital sent a letter December 12, 2014 indicating a willingness to continue negotiations and a "'ray of hope' warranting further bargaining" before declaring impasse and not paying the Bonus. *Id.* at 13.

The circumstances between FPT and the Hospital are different. FPT did not request any bargaining regarding the Christmas Bonus. Instead, the Union went straight to the PRDOL informing of the Union's status of representative of three bargaining units. **The last words of the Secretary of the PRDOL were that the CBAs are the law between the parties and what is stated in the CBAs is an issue for arbitration.**

Further, in *Hosp. Santa Rosa*, the Board determined that even if the PRDOL had granted the exemption to Hospital Santa Rosa, the employer would still be required to bargain over the payment. In support, the Board cited to *Watsonville Register-Pajaronian*, 327 NLRB 957 (1999).

In that case, the Board found the employer could not unilaterally change work schedules in order for the employee to fall within the category of an "exempt" employee under the Fair labor Standards Act. If the employee fell into that category, the employer would not have to pay overtime; if the employee did not, the employer was required to pay overtime. So that the employee was considered exempt under federal law, the employer changed the work schedule. The Board found this change required prior bargaining, as the employer was not mandated by law to classify the employee as exempt; it could simply pay the employee overtime.

The issue with Puerto Rico's Christmas Bonus is not the same. First, the Hospital is arguing bargaining has already taken place with the Union regarding whether the Hospital can request an exemption, so the Hospital is not changing a term or condition of employment. (Compare to: *Hosp. San Carlos, Inc.*, 355 NLRB 153 (2010) (Law 148 had not been incorporated into the CBA and that the bonus due to the employees in *San Carlos Hosp.* was a contractual bonus, not a legal one).

Second, the Hospital could not responsibly pay the bonus under its financial condition, which is why Law 148 allows any employer to request an exemption. The exemption does not apply to certain employers or certain employees; it applies to all those covered by the Law where the company's profits are not at the level the Puerto Rico government has determined is sufficient to require the payment of a bonus. **It is irrational to suggest that the employer can be exempt from payment of the Bonus to its non-union employees, but not from payment to the union employees.**

Finally, any rule adopted by the Board in *Hosp. Santa Rosa* cannot be applied retroactively to events or conduct that took place in 2015. "If the operative conduct or events

occurred before the law-changing decision, a court should apply the law prevailing at the time of the conduct." *American Trucking Assns. v. Smith,* 490 U.S. 167, 110 S. Ct. 2323, 2338 (1990).

II. THE ALJ ERRED IN FINDING THE HOSPITAL DID NOT HAVE A SOUND, ARGUABLE BASIS FOR NOT PAYING THE CHRISTMAS BONUS. *EXCEPTION 12.*

The Hospital had a sound, arguable basis to determine that its contract with the Union gave it the ability to request an exemption under Law 148, and that therefore, the Hospital did not unilaterally modify its contract with the Union. The ALJ, in finding the Hospital did not have a sound, arguable basis to not pay the bonus, relies on the letters the Hospital and the Union received from the PRDOL stating that the exemption would only apply to non-union employees.

The ALJ erred in extending his contract interpretation abilities beyond that allowed by federal law. As discussed earlier, the contract did allow for the request of the exemption. The ALJ erroneously assumes the Secretary of the PRDOL could legally determine the Hospital had to provide to pay the bonus to union-represented employees, notwithstanding the undisputed fact that the Hospital did submit the financial documents demonstrating its inability to pay the bonus; and the Secretary did grant the exemption for non-union employees. In doing so, the ALJ gives no priority at all to the fact that the Secretary also stated in his letters to the parties that he did not have jurisdiction over the matter and that **what was stated in the CBA was the law between the parties and an issue for arbitration**.

i. Federal law limits the scope of the Board's contract interpretation. *Exception 19.*

Where an employer has a "sound arguable basis" for interpreting its CBA to carry with it a particular meaning, and acts accordingly, "the Board ordinarily will not exercise its jurisdiction to resolve a dispute between the parties as to whether the employer's interpretation was correct." *Vickers, Inc.*, 153 N.L.R.B. 561, 570 (1964); *BathIron Works Corp.*, 345 N.L.R.B. 499, 501-02

(2005) (employer's own pension plan documents, arguably incorporated into the CBA, arguable gave the employer discretion to modify the plan without the Union's consent).

Section 8(d) of the Act "is not meant to confer on the Board broad powers to interpret collective bargaining agreements." *San Juan Bautista Med. Ctr. v. Hermandad de Empleados*, Civ. No. 09-2249 (CVR), 2010 US DIST. LEXIS 106470, *19 (Oct. 5, 2010). In fact, by enacting Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, Congress determined "that the Board should not have general jurisdiction over all alleged violations of collective bargaining and that such matters should be placed within the jurisdiction of the courts." *NLRB v. C & C Plywood Corp.*, 385 U.S. 421, 427 (1967). "To do otherwise would have been a step toward governmental regulation of the terms of those agreements, rather than addressing the mechanisms by which such agreements could be reached. *San Juan Bautista Med. Ctr.*, *supra*, 2010 US DIST. LEXIS 106470, *19. Instead "the arbitration process and the courts are well equipped to deal with such matters if the parties choose those avenues of redress." *Id;* See also *American Electric Power*, 362 N.L.R.B. No. 92 (2015) (employer had a sound arguable basis for eliminating insurance coverage, as CBA could be construed as guaranteeing union employee's insurance for as long as plans were being offered).

The ALJ interpreted that even while Law 148 was incorporated into the CBAs, the Hospital did not have a reasonable basis to interpret that its contract gave it the ability to request the exemption and not pay the bonus. But the Hospital, as argued earlier, had bargained for all provisions of the Law 148 to apply to the issuance of the bonus, and fulfilled all requirements of the law by sending in its audited financial statements. The Secretary of the PRDOL did not have the discretion or the authority to limit the effect of the exemption to only those employees that are not part of a bargaining unit; and the Secretary's last word on the issue was that the CBA was

the law between the parties and the issue of what was stated in the CBA was a matter for arbitration.

ii. The Secretary of the PRDOL did not have discretion to limit an exemption to only those employees that are not part of a bargaining unit. *Exception 10.*

The ALJ erred in assuming the Secretary of the PRDOL had the authority to limit the scope of the exemption with the letters the Secretary sent to both the Hospital and the Union. Law 148 and its accompanying Regulation No. 7904 mandates that all employers give their employees that work at least 700 hours from Sept. 1 to Oct. 30 of each year, an annual bonus equal to at least 6% of their yearly earnings up to yearly earnings of $10,000.00. The Law and the accompanying Regulations also permit all employers to seek exemption from this mandate if the employer does not have sufficient financial resources to pay the bonus. **Additionally, the Secretary is mandated to grant the exemption where the employer's "profits are not sufficient to cover the total amount of the bonus without exceeding the fifteen [percent] (15%) limit of the net annual profits [and who submits] ... not later than November 30th of each year a general balance sheet and a profit a loss statement for the twelve (12)-month period from October 1 of the previous year to September 30th of the current year, duly certified by a certified public accountant, in evidence of said status."** 29 LPRA § 507. (emphasis added). The Secretary is also authorized to investigate the financial situation of the corporation; and enact Regulations that assist the office with implementing Law 148. *Id.*

The Secretary does not have the authority to require an employer pay a Christmas Bonus to employees when it has duly requested the exemption and submitted the supporting documents. Notwithstanding, in the letters sent to the Hospital and the Union, the Secretary stated the exemption would only apply to non-union employees. The Secretary based this erroneous

conclusion on Article 6 of the Law, which states that the law would not apply to employees who receive annual bonuses by collective bargaining agreement. *See,* Decision at 11, l. 31-32.

However, Law 148 already specifically has a statute excluding some employees from its provisions. *See,* 29 LPRA § 505. Union-represented employees are not included in this group; nor are they included in the group of employees defined as "exempt" under the corresponding Regulation. The Secretary of the PRDOL could not go extend his authority under Law 148 to deny an exemption to the Hospital (as it applies to union employees) if the Hospital duly complied with the Law 148's requirements. If the Secretary's letter is given as much weight as the ALJ accorded to it, the Secretary's statement that the CBA is the law between the parties and what is stated therein is not within his jurisdiction, must also be heeded.

iii. Further, the Secretary of the PRDOL's last word on the issue was that CBA was the law between the parties and the issue the Hospital and the Union were presenting in their letters was an issue for arbitration. *Exception 11.*

The last letter sent by the Secretary of the PRDOL to the FPT stated the CBA was the law between the parties. Further, the last letter sent by the Secretary to the Hospital, after Carrillo had informed the Secretary of the exact wording of the Christmas Bonus article that applied to each of the units represented by FPT, stated that the Bureau of Labor Standards has no jurisdiction over the matter and what was stated in the CBAs would be a matter for arbitration to be filed with the appropriate forum. TT at 55, l. 19-25; J. Ex. 23(b).

After Carrillo received notice that the issue of the Christmas Bonus Article of the CBA was an issue for arbitration, there was no reason for her to continue sending letters to the Union. And union employees did, as the PRDOL states is the correct course to follow, file grievances with the Department's arbitration forum.

The ALJ erred by choosing to ignore the Secretary of the PRDOL's statements that it had no jurisdiction over the subject and the CBAs were the law between the parties. The CBAs had to be applied as written.

III. IF THE BOARD DETERMINES THE HOSPITAL HAD TO REOPEN BARGAINING PRIOR TO NOT PAYING THE CHRISTMAS BONUS, THE ALJ ERRED IN FAILING TO FIND THE UNION DID NOT RESPOND TO THE HOSPITAL'S INVITATION TO DISCUSS THE REQUEST FOR EXEMPTION, AND THEREFORE WAIVED ITS RIGHTS TO BARGAIN. *EXCEPTIONS 7, 15, 16, 17, 20.*

In the December 1st letter the Hospital sent to the Union informing of the request from an exemption from the Christmas Bonus, the Hospital stated it was available to discuss the matter of the request for exemption from the payment of the bonus. However, the ALJ interpreted the Hospital's invitation as a fait accompli similar to the employer's invitation in *Hospital Santa Rosa*, supra. The reasoning does not support the decision.

In *Hospital Santa Rosa*, the employer informed the employees it was not paying the bonus on December 15, the same day it was due.[5] Meanwhile, the Hospital notified the Union of the exemption 15 days before. Additionally, the ALJ does not account for the limited time the Hospital had between making the decision to apply for the exemption (upon receipt of the audited financial statements dated Nov. 13, 2015) and applying by the deadline to apply for an exemption (November 30th).

"[A]n employer's obligation, prior to making a change in the terms and conditions of employment, is to give notice of its planned change and afford a reasonable opportunity for bargaining." *Associated Milk Producer*, 300 NLRB 561, 563 (1990). "Once an employer gives

[5] The ALJ in *Hosp. Santa Rosa, Inc.*, incorrectly, upon his finding of a fiat accompli, found that the Hospital had notified the employees no Christmas Bonus would be paid on December 12, which was not the case (at least according to the Statement of Facts making up the decision). In fact, on that date (December 12), the employer had sent the Union a letter indicating its availability to meet during the weekend of the 13th and 14th. Considering the ruling is based on a flawed version of the facts, the Board cannot rely on it.

notice of its decision and affords a reasonable opportunity for bargaining, the union has an obligation to take advantage of the opportunity by requesting bargaining." *Lenz & Riecker*, 340 NLRB 143, 145 (2003). "Where the union does not do so, the Board will not find a failure–to-bargain violation." *Id.* (union failed to respond to notice of employer's decision and its offer to bargain over the effects of the decision). "If an employer meets its obligation and the union fails to request bargaining, the union will have waived its right to bargain over the matter in question." *Ass. Milk Producer, supra.*

Carrillo testified she could not notify the employees (this included union employees) before first confirming with the PRDOL that the exemption had been granted. Therefore, Carrillo telephoned the PRDOL on November 30, 2015 and received confirmation that the exemption had been granted. On December 1st, one day later, Carrillo simultaneously notified both the Union and the Hospital supervisors. Prior to this, **there was nothing to discuss or bargain for because the Hospital had not yet been granted the exemption. Before the exemption was given, the Hospital had to pay the Bonus. The Hospital therefore gave as much notice to the Union as was possible; and the Union had 15 days, from the notice, to bargain. The Union chose not to bargain.**

The Union did not respond to the Hospital's invitation to discuss; and, afterwards, Ufarry never requested a meeting to bargain over the 2015 Christmas Bonus. TT at 120-121. While Ufarry testified that he called Carrillo after hearing from other employees that the Christmas Bonus would not be paid, *see,* TT at 65, l. 3-8; Carrillo herself testified that she never received a call from Ufarry regarding the Bonus, and only received letters. The ALJ erred by not giving any credit to Carrillo's testimony in this regard. *Exception 5.* Additionally, at trial, the General Counsel did not seat any of the employees that allegedly called Ufarry and notified him of the

Hospital's decision; and presented no evidence of these calls aside from Ufarry's own testimony. *Id.* at 63-64.

Instead of requesting bargaining, on December 1, Ufarry went straight to the PRDOL. TT at 70, l. 2-4. On December 4, the PRDOL responded to Ufarry by stating the exemption would only apply to non-union workers **and the CBA was the law between the parties**. *Id.* at 71, l. 1-8. Ufarry did not include the contents of the Christmas Bonus articles any of his letters to the Department. *Id.* at 73, l. 7-15.

Ufarry took the December 4 letter of the PRDOL and annexed it to a letter to the Hospital, which again requested, **not to bargain**, but that the Hospital pay the Christmas Bonus. TT at 71, l. 17-19; Jt. Exh. 16(b). This was the last communication the Hospital received from the Union in respect to the Bonus. In fact, the Union, on that date (December 4th), cancelled a bargaining session for the Clerk's Unit.

Ufarry did not broach the subject of negotiating a payment of a Christmas Bonus with Carrillo until December 11, where Ufarry requested the bonus be paid in two parts to the Unit B employees only. He never even made a proposal or an approach for the other Units FPT represented (Units A and C).[6]

The ALJ failed to even consider that the Union knew of the Hospital's financial situation at least 2 months prior to being notified the Hospital had requested exemption. *Exception 3.* The Union knew the financial circumstances of the Hospital; and, inclusive was provided financial documents during bargaining meetings for the Clerk's unit. Still, the Union made no attempt to actively address the subject of the bonus until 10 days after it received the notification of the request for nonpayment. The parties reached an impasse at the December 11 meeting. The ALJ

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[6] The ALJ erred by not considering that this proposal was made in relation to Unit B employees only, and not employees of Units A or C. *Exception 6.*

does not account for the Union never bringing up the subject of the bonus again, either with the Hospital or with the PRDOL.

In conclusion, Ufarry (1) cancelled a December 4 meeting where he could have brought up this possibility; and (2) waited until an official bargaining session had ended when he brought his proposal on December 11, where he made the proposal for the Clerks Unit only. Here, the Union waived any right to bargain the issue of the Christmas Bonus in respect to Units A or B, whose CBAs were still in effect, or Unit C, whose CBA had since expired. The ALJ erred in finding otherwise.

IV. WHEN THE UNION DID MAKE A PROPOSAL ON THE PAYMENT OF THE BONUS TO THE CLERKS UNIT ON DECEMBER 11, THE PARTIES REACHED AN IMPASSE. *EXCEPTIONS 18, 20.*

On December 11, 2015, when Ufarry belatedly decided to bring up the subject of the Christmas Bonus for the Clerk's Unit only (and, as previously stated, not for either of the other units), he proposed the Hospital divide the payment in two parts: paying $300 at the moment; and $300 in January 2016. The Hospital did not accept the proposal, and maintained its position that the Law and the Collective Bargaining Agreements allowed the Hospital to seek an exemption.

One meeting is sufficient to satisfy a party's obligation to bargain. *Dixon Distributing Co.*, 211 N.L.R.B. 241, 244 (1974) (impasse reached after one 20-minute session). After all, "[b]argaining has never meant reaching agreement." *Id.* An impasse exists where there appears to be no realistic possibility that a continuation of bargaining ***at the time*** would be fruitful. *I. Bahcall Indus.*, 287 N.L.R.B. 1257 (1988) (impasse reached as economic relief was of immediate and overriding importance to employer). Indeed "matters arise where the exigencies and economics of a situation seem to require rather prompt action. In such circumstances, 'bargaining' may well be in good faith, and lawful, without being protracted, and without any

agreement being reached." *Dixon Distributing, supra.* An employer can implement its final proposal "after good-faith negotiations have exhausted the prospects of concluding an agreement." *Taft Broadcasting Co.*, 163 N.L.R.B. 475, 478 (1967).

During the discussion between the Employer and Union that took place on December 11, it was clear the parties were not going to change their positions before December 15, 2015 (the day the bonus was due under the Law, if the exemption is not granted). Time was of the essence in this situation, and the Union could have, and did not act sooner than December 11, especially considering the only offer the Union made was one which did not ease the financial burden for the Hospital. (While Ufarry testified to having phone-called Carrillo on December 1, he did not speak to her; did not testify to whom he spoke to, Carrillo maintained she did not receive a message Ufarry had telephoned, and the General Counsel did not present any evidence to buttress Ufarry's testimony, or present any other evidence of an attempt at a discussion with the Hospital on the matter. *See Exception 5).*

The Union's final position on the matter was full payment of the bonus; and the Hospital had already stated, and evidenced, that it was not in a financial position to pay the full bonus. It understood then that: the parties were "at the end of their rope." *AMF Bowling Co.*, 314 N.L.R.B. 969 (1994).

V. INDIVIDUALS THAT CEASED TO BE EMPLOYED BY THE HOSPITAL BY DECEMBER 2015 WERE NOT COVERED BY THE CBA. *EXCEPTIONS 23-26.*

The ALJ ordered that the Hospital pay the Bonus to individuals not employed by the Hospital in December 2015 (the due date of the bonus). These individuals were not part of a Bargaining Unit in December and did not have rights covered by a CBA; and (in respect to the Hospital) did not have rights covered by the National Labor Relations Ander under Sections

8(a)(1); 8(a)(5); or 8(d). Thus the ALJ did not have jurisdiction to give orders regarding these individuals.

The Complaint filed by the Regional Director only alleges violations of the Act for, on December 15, 2015, failing and refusing to pay the bonus as required by the terms of the collective-bargaining agreement. GC Exh. 1(b), allegation 6(a)-(c). And the final Compliance Specification alleged back pay only to employees. GC Exh. 1(y) and 12. There is no allegation in the Complaint or any of the amendments that imputes activity that violates the National Labor Relations Act as it applies to individuals not employed by the Hospital on December 15, 2015.

It was only during trial it came to light that the General Counsel believed these individuals had a right to the bonus because they were working at some point during the period counted toward computing whether a bonus was due and the amount due, even though they were not employed the month the bonus was due (December 2015). Thus, during trial, for purposes of amending the Compliance Specification, the General Counsel requested, and the Hospital provided, four lists: one for Unit A, one for Unit B, one for Unit C, and one for those individuals that worked at some point during the Christmas Bonus period, but who were unemployed on December 2015.

During trial, Hospital's Human Resource Director Irma Carrillo specifically testified that when an employee that was a member of the bargaining unit resigns or is terminated, the employee resigns to all the benefits of the bargaining unit he or she once belonged to. TT at 114, l. 18-25; 115, l. 1-5. The General Counsel presented no evidence to contradict this testimony. **Additionally, the General Counsel specifically questioned Carrillo as to whether employees of the Hospital will receive the Bonus under Law No. 148 if they fulfill the requirements of**

the law, even if they are not an employee come December. ***Id.*** **at 125, l. 8-13.** The answer is yes, under Law 148. However, in 2015, the Hospital was given an exemption from payment.

When the Hospital brought the issue up in its Brief to the ALJ, the General Counsel sought to strike it; insisting that the issue was not brought up until the Hospital's Post-Trial Brief.

It is incredulous for the General Counsel to argue that "for the first time" it is learning of Hospital's objection to these employees. In each of its Answers to the Regional Director's Compliance Specifications, the Hospital stated none of the individuals listed in the Compliance Specification were owed a Christmas Bonus and the Hospital had been provided an exemption from payment of the bonus. In its affirmative defenses, the Hospital listed lack of jurisdiction. Additionally, in a Motion for Summary Judgement which was denied by the Board, the Employer argued Law 148 applied to the bonus for all individuals listed by the Regional Counsel. *See,* GC Exh. 1(j); 1(k); 1(s); 1(aa). *Cobb Mechanical Contractor's, Inc.*, 333 NLRB 1168, 1176 (2001) (revoked for other reasons by *New Process Steel, LP v. NLRB*, 560 US 674 (2010) (Respondent's answer provided more than a general denial and suffices to raise an issue before the ALJ). Finally, the issue was discussed during trial and witnesses were questioned on the topic of former employees being paid a bonus.

The ALJ declined to strike the argument from the Brief, but decided that the Employer could not question this part of the Compliance Specification because it had not given sufficient notice in its answer that one of its defenses to the Compliance was that the employees listed were not employees at the time the bonus was due. The ALJ erred in doing so.

Employees that are not covered by a Collective Bargaining Agreement cannot receive anything "under" the Agreement, including a Christmas Bonus. All three CBAs recognize the

bargaining unit as consisting of only those employees who are employed. *See*, Jt. Exh. 5 (b); 7(b) and 12(b). The Board cannot enforce an order, and lacks jurisdiction to give an Order forcing the Hospital to give a bonus to these employees. The Board does not have jurisdiction to award benefits to individuals that are not part of the bargaining units. If they were to receive a bonus, it would be under Law 148, and the Hospital requested, and was given, an exemption.

Further, the Hospital's past practice is that an employee who has worked the 700 hours contemplated by Law 148, and yet is no longer employed at the time the bonus is due, has a right to a bonus under Law 148, not the CBA. Not paying Christmas Bonuses in accordance with the provisions of a CBA, to former employees who are no longer employed by December 2015, is "in line with [the Hospital's] long standing practice" and constitutes "a mere continuation of the status quo." *NLRB v. Katz*, 369 U.S. 736, 746 (1962).

Finally, whether these employees are due a Christmas Bonus is an issue of liability, not of Compliance with the Judgment, and therefore is not subject to the provisions of the Board Rules and Regulations regarding answers to Compliance Specifications. The Hospital is arguing, as it argued for all other employees, that these former employees are not due a back pay at all; it is not an issue of how much they are due, but whether they are due back pay at all. The ALJ avoided the issue by categorizing: it as (1) an issue of Compliance; (2) of which the General Counsel had no prior knowledge. Both of these are erroneous conclusions.

VI. THE ALJ ERRED IN ORDERING FOR COMPENSATION OF ADVERSE TAX CONSEQUENCES WHEN THE REGIONAL DIRECTOR DID NOT REQUEST THIS REMEDY IN THE AMENDED COMPLIANCE SPECIFICATION. *EXCEPTION 22.*

Right before trial, the Regional Director specifically amended the Complaint Specification to eliminate the request for compensation due to adverse tax consequences. GC Exh 1(y). Yet, this compensation is included in the Order.

The Hospital had no prior notice that this was an amount that was under controversy. The ALJ cannot Order compensation not requested in the Compliance Specification. *See, CPL (Linwood) LLC*, 2016 NLRB LEXIS 844, *31 (November 30, 2016) (declining to address issue that was not included as an allegation in the Complaint and which was not fairly and fully litigated); *Phillips & Sons Masonry & Construction, Inc.*, 338 NLRB No. 19, 2002 NLRB LEXIS 476 (2002); *Weldun Int'l. Inc.*, 2001 NLRB LEXIS 223 (2001).

D. CONCLUSION

The Hospital duly, legally and timely sought an exemption to the payment of the 2015 Christmas Bonus under Law 148 of 1969, and this exemption was granted. The Hospital was not required to pay the 2015 Christmas Bonus to any employees or former employees, by the terms of the CBAs it had with FPT for employees in Units A, B and C. Further, the Hospital had a sound, arguable basis for interpreting its CBAs to incorporate the entirety of Law 148 into its CBAs, and afford it the right to seek the exemption when its financial documents showed losses. Consequently, the Hospital did not fail and refuse to bargain collectively and in good faith with FPT over the 2015 Christmas Bonus. Furthermore, when the Hospital informed the Union of the request of exemption, the Union waived the right to further bargain over the issuance of the Christmas Bonus when it did not answer the Hospital's offer to discuss the situation. When the Union did bring the subject up after a bargaining meeting, the parties reached an impasse. The Hospital does not owe back pay to any of the employees listed in the Compliance Specification, and does not owe interest, compounded daily, or any compensation for adverse tax consequences.

In light of the above, we respectfully request that this Complaint and Compliance Specification be dismissed in its entirety.

RESPECTFULLY SUBMITTED,

On May 31, 2017

Amanda Collazo Maguire

E. CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2017, a true and correct copy of this Brief was filed with the National Labor Relations Board via its electronic system and was served by electronic mail on José Añeses, at janesespena@gmail.com, the Regional Director Margaret Diaz at Margaret.diaz@nlrb.gov, and Counsel for the General Counsel Manijée Ashrafi Negroni at Manijee.ashrafi-negroni@nlrb.gov

Amanda Collazo Maguire

NNT-BN-148B
(FE. 10/7)
(Rev. 10/8)

Commonwealth of Puerto Rico
DEPARTMENT OF LABOR AND HUMAN RESOURCES
Bureau of Labor Norms

[signa]

REPORT OF REQUEST FOR EXEMPTION LAW NO. 148 OF JUNE 30, 1969, AMENDED

Bonus Year 2015

Employer	Area	Status of Financial Statement
PR Gold Bond Administration Services, Inc. (PR Gold Bond Administration Services, Inc.)	Bayamón	Accepted
PR Retail Stores, Inc. (Almacenes Pitusa - Oficina Central)	Carolina	Accepted
Prako's Café and Grill, Inc. (Prako's Café and Grill, Inc.)	Bayamón	Accepted
Prako's Pharmacy, Inc. (Prako's Pharmacy)	Carolina	Accepted
Preferred Resource Solutions, Inc. (Preferred Resource Solutions, Inc.)	Bayamón	Accepted
Premier Hotel Management, Inc. (San Juan Beach Hotel)	San Juan	Accepted
Premium MSC, Inc. (PMSC)	Carolina	Accepted
Premsco Inc. (Premsco Inc.)	San Juan	Accepted
Presbyterian Community Hospital, Inc. (Ashford Presbyterian Community Hospital)	San Juan	Accepted
Prestige Property Group Inc. (Prestige Property Group)	Caguas	Accepted
Prime Center LLC (Prime Center LLC)	San Juan	Accepted
Prime Health Services, Inc. (Prime Health Services, Inc.)	Ponce	Accepted
Prime Janitorial Metro and Health, Inc. (Prime Janitorial Metro and Health, Inc.)	Ponce	Accepted
Prime Janitorial Services, Corp. (Prime Janitorial Service, Corp)	Ponce	Accepted
Prime Steak Restaurant, Corp (Ruth's Chris Steak House)	Carolina	Accepted
Princess International, Inc. (Princess International, Inc.)	San Juan	Accepted
Private Cops Security, Corp. (Private Cops Security, Corp.)	Humacao	Accepted
Process Control Systems Specialist, Inc. (Process Control Systems Specialist, Inc.)	Ponce	Accepted
Producciones Anisa, Inc. (Producciones Anisa, Inc.)	Caguas	Accepted
Professional Contractors Team, S. E. (Professional Contractors Team, S. E.)	Ponce	Accepted
Professional Equipment, Corp. (Professional Equipment, Corp.)	San Juan	Accepted
Pro-Pave Corporation (Pro-Pave Corporation)	San Juan	Accepted
Puerto Nuevo Security Guard, Inc. (Puerto Nuevo Security Guard, Inc.)	San Juan	Accepted
Puerto Rican Pizza, Inc (Little Caesars)	Mayaguez	Accepted
Puerto Rico Ambulance, Inc. (Puerto Rico Ambulance, Inc.)	Arecibo	Accepted

EXHIBIT I

EL VOCERO DE PUERTO RICO, Appellant

v.

UNIÓN DE PERIODISTAS DE ARTES GRÁFICAS Y RAMAS ANEXAS, Appellees

KLAN 201100327

Puerto Rico Court of Appeals

Judicial Region of San Juan

Civil No.: KAC 2010–1382(505)

2012 PR App. LEXIS 2787

August 30, 2012

Previous History

Appeal from the Court of First Instance, San Juan Court

Civil Number KAC 2010-1382 (505)

Regarding: Arbitration Award Dispute

Judges: Panel III composed by its president Judge Ramírez Nazario and Judges Piñero González and Figueroa Cabán.

OPINION BY: FIGUEROA CABÁN, Presiding Judge

Judgement

In San Juan, Puerto Rico, on August 30, 2012

*1 Appears before this Court, Caribbean International News Corporation d/b/a El Vocero de Puerto Rico, hereinafter "El Vocero" or the appellant, and requests that we revoke a judgment issued by the Court of First Instance, San Juan Court, hereinafter CFI, that denied request for a review of an arbitration award on the basis that said award was issued pursuant to Act No. 148 of June 30, 1969, 29 LPRA Sec. 501 et seq., hereinafter Act No. 148-1969, which establishes the obligation to grant an annual bonus to employees of private companies during the Christmas season.

For the reasons set out below, the contested judgment is upheld.

-I-

The labor-management relations between El Vocero and its employees, the latter represented by the Union of Journalists of Graphic Arts and Associated Branches, hereinafter UPAGRA or the appealed, are regulated by the Collective Bargaining Agreement approved on July 31, 1998.[1] Even when this labor agreement established its

own term of effectiveness from June 1, 1997 until May 31, 2001, it included a clause that extended its validity in the event that negotiations for a new collective bargaining agreement extended beyond the expiration date.[2] In this respect, Article XXVII of the Collective Bargaining Agreement provides in pertinent part:

> Expiration and Renewal
>
> 1. This Collective Bargaining Agreement shall enter into force on June 1, 1997 and shall expire on May 31, 2001, unless a different date is provided in some article of this Agreement.
>
> 2. Within ninety (90) days before the expiration of this Agreement "The Company" and the "Union" shall begin negotiations for a new Agreement. The terms and conditions of this Agreement shall remain in force until the negotiations legally conclude.[3]

Likewise, the Collective Bargaining Agreement provided for the payment to the employees of a Christmas Bonus, payable during the years 1997 until 2000, on or before December 15 of each year. [4] In this regard, Article XXVI of the Collective Bargaining Agreement provides:

> "The Company" shall pay to the employees, members of the contracting unit during the term of this Agreement, a Christmas Bonus computed for the first year from October 1, 1996 to September 30, 1997 and so on in accordance with following:
>
> PAYABLE NO LATER THAN DECEMBER 15, 1997
>
> 5% of your salary up to $ 700.00
>
> PAYABLE NO LATER THAN DECEMBER 15, 1998
>
> 5% of your salary up to the amount of $ 750.00
>
> PAYABLE NO LATER THAN DECEMBER 15, 1999
>
> 5% of your salary up to the amount of $ 800.00
>
> PAYABLE NO LATER THAN DECEMBER 15, 2000
>
> 5% of your salary up to the amount of $ 1000.00.

Subsequently, on October 6, 2000, El Vocero and UPAGRA signed an Agreement in which they, among other things, stipulated that the employer would pay the employees covered by the Collective Bargaining Agreement, a Christmas Bonus in the amount of

$1,200.00 on or before December 15, 2003.[5] This labor agreement also provided that, except for the express modifications, the Collective Agreement would continue until May 31, 2004. [6]

In the absence of other labor agreements between the parties, on December 15, 2006, Mr. Gaspar Roca, then President of El Vocero, sent the employees and UPAGRA a Memorandum informing them that the Christmas Bonus of $ 1,200.00 corresponding to that year would be paid in two installments, namely: $ 400.00 on December 18, 2006 and $ 800.00 on January 15, 2007.[7] In said correspondence, El Vocero argued that it had to implement this measure for economic reasons and for the well-being of all since improvement of the territory's economy had not been reflected in the operations of the company.[8]

Thus, the appellant made the payment of the Christmas Bonus for 2006 in two installments, after December 15, 2006, as announced. [9]

Dissatisfied with this procedure, on April 3, 2007, UPAGRA filed a complaint before the Bureau of Conciliation and Arbitration of the Department of Labor and Human Resources in which they alleged that El Vocero violated the Collective Agreement due to the postponed payment of the Christmas Bonus. To that end, they claimed payment of the penalty provided by Act No. 148-1969, plus the payment of fees.[10]

As a result, on October 6, 2009, an Arbitrator held a hearing and subsequently the parties presented their written arguments.[11] Because they did not reach an agreement on the submission of the controversy, the Arbitrator made one based on the powers granted to him by the Rules for the Internal Order of the Bureau of Conciliation and Arbitration.[12] The same was limited to the resolution of the following controversies:

> That the Arbitrator determine whether the complaint filed is arbitrable or not. If it is arbitrable, to determine, according to the facts, the Law and the Collective Bargaining Agreement and, if the members of the appropriate unit were paid the Christmas Bonus for the year 2006 according to the Agreement. If it is not arbitrable, dismiss the complaint.

For its part, El Vocero requested the Arbitrator to declare that it had no jurisdiction to deal with the dispute because the arbitration clause was not in force when the Collective Agreement expired in 2001.[13] It further argued that if the complaint were to be resolved on its merits, the only penalty that it was required to pay is half of $ 300.00, minimum annual bonus required by Act No. 148-1969.[14] El Vocero stated that its only obligation to the employees is the payment of $ 300.00 of the Christmas Bonus, plus $ 150.00 as penalty for having paid it after December 15, 2006.

In contrast, UPAGRA argued that the Collective Agreement was still in force and therefore the agreement for a Christmas Bonus by no later than December 15 of each year was still applicable. It further argued that because El Vocero paid the Christmas Bonus after December 15, 2006, in violation of the Collective Bargaining Agreement, it is incumbent upon the employees to pay a penalty of $ 600.00 each, according to Act No. 148-1969, a payment that constitutes half of the total of the agreed upon Christmas bonus.[15]

After considering the positions of the parties, the Arbitrator determined that the dispute was arbitrable because the Collective Bargaining Agreement of July 31, 1998 was in force at the time of the dispute. This is due to the fact that, pursuant to Article XXVII of the Collective Agreement, which provides for an automatic renewal of the Collective Agreement until a new labor agreement is effectively negotiated, at the time of the dispute the parties were involved in a negotiation process. Therefore, in accordance with the foregoing, the agreement between the parties was automatically renewed. [16]

In accordance with the foregoing, the Arbitrator issued an award in which it concluded that El Vocero violated the provisions of the Collective Bargaining Agreement due to late payment of the Christmas Bonus corresponding to the year 2006, so that the provisions of Act No. 48-1969 were applicable. In this regard, it provided:

> Act No. 148 on the Christmas Bonus establishes that if the Company cannot pay the Bonus, on the date set for it, there must be an agreement between the parties to determine the new payment date. However, in the absence of evidence that said agreement has been reached, nor has there been a dispensation granted by the Department of Labor that exempts El Vocero from the payment of the bonus, it is appropriate to issue a determination in accordance with the provisions of the Law.
>
> When there are legal provisions in the public interest, such as the Christmas bonus, the contracts have to comply with them. 31 L.P.R.A. sec. 3372.... [17]

Consequently, the Arbitrator ordered El Vocero to pay the penalty provided by Act No. 148-1969, equivalent to half the amount of the Christmas Bonus that was paid after December 15, 2006, plus attorney fees of 10% of the total debt.[18]

Unsatisfied with the arbitration award, El Vocero filed before the CFI a *Request for Review and Annulment of Arbitration Award* in which it argued that the Christmas Bonus that its employees received was in accordance with the Collective Bargaining Agreement, so that the provisions of Act No. 148-69 were not applicable to the dispute.[19] In support of its new and contrary position, it cited Art. 6 of Act No. 148-1969, which exempts from

the application of the statute employers who grant an annual bonus under collective bargaining agreements.[20]

In disagreement, UPAGRA objected to the review of the award on the understanding that the CFI lacks jurisdiction since the submission agreement on the issue for arbitration established by the Arbitrator did not provide that the complaint be resolved in accordance with law. [21]

As a consequence of the above, on February 18, 2011, the CFI issued a Judgment in which it denied El Vocero's request for judicial review of the arbitration award.[22] As to the matter of its jurisdiction, the court stated:

> From the issue submission agreement [done by the Arbitrator] it follow that the complaint would be resolved by the Arbitrator in accordance with the law, which implies that it would be resolved in accordance with the law. Therefore, in accordance with the doctrine outlined above, this Court is empowered to issue the review of the award requested. [23]

As to the merits of the controversy the Court ordered:

> Article 6 of the Christmas Bonus Act, *supra*, exempts from complying with the provisions established in the legislation the employer that grants annual bonuses to its employees or workers by collective bargaining agreement, "... except in cases where the amount of the bonus to which they have a right by such collective bargaining agreements results to be less than that provided by this chapter." In such a case, the employer should satisfy the amount necessary to complete the Christmas bonus. The Act clearly refers to an annual bonus distinct or additional to the Christmas bonus required by current labor legislation. *El Vocero did not argue that its employees received an annual bonus, agreed in the collective bargaining agreement, distinct from the Christmas bonus.* The exemption of Art. 6 of the Christmas Bonus Act, *supra*, does not cover them. In this case, the Arbitrator issued an award in accordance with the law and we must confirm its determination. [24]

In disagreement with this decision, El Vocero appeals to us and raises the following error:

The Honorable Court of First Instance erred in determining that the exemption of Article of the Christmas Bonus Act did not apply to El Vocero and by affirming the arbitration

award issued by the Arbitrator imposing the penalty and the attorneys' fees.

After reviewing the writs of the parties and the documents in the case, we are in position to resolve.

-II-

A.

In Puerto Rico, arbitration plays a leading role as a method of alternative dispute resolution.[25] Our legal system recognizes a marked deference to arbitration awards, given the clear and vigorous public policy in favor of it as a mechanism to elucidate labor-management controversies.[26] Such deference is due, inter alia, to the fact that arbitration is the least technical, more flexible, less onerous and therefore more appropriate and desirable means of resolving disputes arising from the application and interpretation of collective bargaining agreements.[27] Thus, the award is a faster and less costly mechanism than judicial proceedings, which offers more flexibility to the parties.[28]

Now, arbitration may arise from an accessory clause to a principal agreement whereby the parties agree to arbitrate their future disagreements or it may arise from a written agreement to resolve an existing dispute. [29] In this way, the parties have ample freedom to incorporate in the issue submission agreement the qualifications they deem appropriate to the case and the arbitrator is obliged to comply with them. [30] Therefore, it is this agreement of submission that confers the decisional power to the arbitrator and delimits its sphere of action; being null, the award that exceeds the powers delegated in said agreement of submission.[31]

As to its legal effect, an award of arbitration, in general, has a nature similar to that of a judgment or judicial decree. [32] For that reason, the function of the arbitrator is analogous to that exercised by a trial court of first instance; the appellate forum having the authority to review the arguments in this regard.[33]

It has been established that the actions of the Court of First Instance in reviewing an award of arbitration are analogous to that of an administrative review and that the role of the primary forum is that of an appellate forum.[34] Now, the award of an arbitrator is final and unappealable, so what was validly arbitrated cannot be litigated in court. [35]

However, an award, based on a voluntary submission, can be challenged only in cases of fraud; improper conduct; lack of due process at the hearings; violation of public policy; lack of jurisdiction; or that it does not resolve all the issues in dispute.[36]

In those arbitration awards that do not have to be issued "according to law," the course and trend of the decisions of the Supreme Court of Puerto Rico regarding its judicial review has been a clear and constant one: one of judicial restriction or abstention, and a special deference to arbitration awards because they constitute the ideal process to resolve labor-management disputes in a fast, comfortable and less expensive manner. [37]

On the contrary, when the parties agree that the arbitral award is in accordance with law, courts may correct legal errors in reference to the applicable law.[38] However, even if a review of the legal merits of the award is permissible, Court of First Instance should not be inclined to declare the award null and void unless the Arbitrator has effectively failed to settle the dispute in accordance with the law, as agreed to by the parties. [39]

Thus, our legal system in commercial arbitration has recognized instances in which a court could revoke an arbitration award, namely: (1) when it was obtained through corruption, fraud or other improper means; (2) there was obvious bias or corruption on the part of the arbitrators or any of them; (3) the arbitrators acted erroneously in attempting to postpone the hearing after any just cause for the hearing, or by refusing to hear relevant and material evidence of the dispute, or incurring in any error that would prejudice the rights of either party; (4) when the arbitrators exceed their duties or the award rendered does not resolve in a final and definitive manner the dispute submitted; and (5) when there was no valid issue submission or arbitration agreement and the proceeding was initiated without the intent to arbitrate. [40] When the award is revoked, the court will have discretion to order a new hearing before the same arbitrators or new ones to be selected according to the agreement signed by the parties.[41]

Finally, the arbitration award cannot be annulled by mere errors of judgment, whether these are in terms of law or facts. [42] Thus, it should be borne in mind that a discrepancy of judgment with the award does not justify judicial intervention as it destroys the fundamental purposes of arbitration to resolve disputes quickly, without the costs and delays of the judicial process. [43]

B.

Act No. 148 of June 30, 1969, commonly known as the Christmas Bonus Act, hereinafter Act No. 148-1969, provides for the employer's payment of an annual bonus to certain employees of the private sector. [44] In this regard, Art. 1 of Act No. 148-1969 provides the form of the corresponding payment:

> Any employer who employs one or more workers or employees within the period of twelve (12) months, from October 1 of any year until September 30th of the subsequent natural year shall be bound to grant to each one of said employees who have worked seven hundred (700) hours or more or

> one hundred (100) hours or more in the case of dock workers, within the period set forth, a bonus equal to 3% of the total wage up to a maximum of ten thousand dollars ($ 10,000) for the bonus to be granted in 2006; to 4.5% of the total wage up to a maximum of ten thousand dollars ($ 10,000), for the bonus to be granted in 2007; to 6% of the total wage up to a maximum of ten thousand dollars ($ 10,000) for the bonus to be granted from 2008, earned by the employee or worker within that period of time. It is hereby provided that any employer who employs fifteen (15) or less shall grant a bonus equal to 2.5% of the total wage up to a maximum of ten thousand dollars ($ 10,000), for the bonus to be granted in 2006; to 2.75% of the total wage up to a maximum of ten thousand dollars ($ 10,000), for the bonus to be granted in 2007; and 3% of the total wage up to a maximum of ten thousand dollars ($ 10,000) for the bonus to be granted in 2008....
>
> This bonus will constitute compensation in addition to any other wages or benefits of any other nature to which the employee is entitled, but any other bonus of the same nature to which the employee is entitled shall be credible by virtue of the individual work contract.[45]

For its part, Art. 2 of the aforementioned statute establishes the time period for the payment of the bonus and the penalties in case of its breach. In this regard, it provides for the employer to make the payment of the bonus not before the first day nor after the fifteenth day of each month of December, unless another payment date is agreed to by the employer and his employees. [46] Thus, if the employer does not make the payment in the manner and within the time period indicated, or on the date in which he agrees with the workers, he will be obliged to pay, in addition to the bonus, a sum equal to half the bonus as additional compensation when payment has been made within the first six months of non-compliance.[47] Moreover, if the employer takes more than six months to make the payment, he will be obliged to pay another sum equal to this bonus as additional compensation for his non-compliance. [48]

Act No. 148-1969 contains in its provisions certain exceptions to the payment of the Christmas bonus. Thus, agricultural workers, persons employed in domestic service, institutions for charitable purposes, and civil servants and public employees are excluded from the payment of the bonus.[49] Likewise, it exempts from compliance cases where employees receive annual bonuses through collective bargaining agreements, except in cases where the amount of the bonus to which they were entitled by virtue of the collective bargaining agreement is less than that provided by the law.

On the other hand, Article 7 of Act No. 148-1969 authorizes the Secretary of Labor and Human Resources to adopt rules and regulations that assist in the proper application of the statute.[50] Under this provision, the *Regulation of the Secretary of Labor and Human Resources to Administer Act No. 148 of June 30, 1969, as amended, Second Revision (2006)*, hereinafter the 2006 Regulation, was adopted. The purpose of said regulation is to establish the procedure for the application of Act No. 148-1969.

Article II of the 2006 Regulations defined the term bonus as "an additional compensation to any other wages or other benefits of another nature to which the employee is entitled, payable within the time period and under the conditions established by the law." [52] In addition, it includes that any other bonus of the same nature to which the employee is entitled by virtue of an individual labor contract, collective bargaining agreement or by custom of the employer, will be credited. [53]

Consistent with the purpose of the 2006 Regulation, Article III established the obligations of the employer, among which are: ... to pay a Christmas bonus not before the first nor after the fifteenth of each December, except in cases in which by Collective Bargaining Agreement or by agreement between the employer and its employees, another date has been agreed to, **as long as it is during the Christmas period and should not exceed December 31 of the current year**; notify the Secretary when by mutual agreement between the employer and its employees it has been agreed to change the legal date of payment of the bond; notify the Secretary when, for reasons of losses, the bonus will not be paid in full or in part; ... (Emphasis in original). [54]

Likewise, Articles V and VI of said regulation establish the amount, manner and date by which the employer must make the payment, in addition to the penalties for non-payment. In this regard, it provided that the bonus that an employee will receive will be "equivalent to **3% in (2006), 4.5% in (2007) and 6% in (2008) according to total salaries accrued**, computed up to a maximum of ten thousand dollars (10,000)." (Emphasis in original). [55] In turn, it provided for a penalty to be imposed in case the employer did not make the payment of the bonus in accordance with to the time period established by law. Specifically, Article 6 states that if the employer does not make the payment within the time period stipulated by law, or on the date that the employer and his employees agreed, the employer was obligated to pay, in addition to the bonus, a sum equal to half of the bonus in the concept of an additional compensation, if payment was made within the first six months of its non-compliance. [56] On the other hand, if the employer took more than six months to make the payment, it would be obliged to pay another sum equal to that bonus as additional compensation. [57]

-III-

In summary, El Vocero contends that the Arbitrator erred in applying the penalty for noncompliance with the payment of the annual bonus provided in Law 148-1969 since

the same statute in Article 6 expressly exempts the employer from the application of the same when it collectively contracts with its employees the payment of the Christmas Bonus. In addition, the appellant alleges that the Arbitrator did not have jurisdiction to solve the Christmas Bonus dispute for the year 2006, since the Collective Bargaining Agreement approved on July 31, 1998 did not provide or contemplate agreements on the manner of payment or the imposition of penalties for the years after 2001.

For its part, the UPAGRA proposes that because the parties conferred authority on the Arbitrator to resolve in accordance with law, judicial review should be limited to correcting judicial errors. Consistent with the foregoing, it maintains that Act No. 148-1969 and the corresponding Regulations do not limit the application of its provisions to the employer who grants the annual bonus by means of collective bargaining agreements, but provides the parties with the liberty to configure it as the parties find appropriate as long as it is paid before December 31 of each year. Thus, it understands that the exemption provided in Article 6 of the statute refers to other annual compensations and not to the Christmas bonus.

In light of the parties' arguments, we are of the opinion that the arbitration award is in conformity with the law, and therefore there is no justification for judicial intervention with the same. To review.

First, we address the allegations of lack of jurisdiction. The Arbitrator determined that the dispute in the case was arbitrable. This is due to the fact that in the determination of facts number 6, the Arbitrator concluded that at the date the controversy about the payment of the Christmas Bonus arose, the parties were in the process of negotiating a new Collective Bargaining Agreement. For this reason, Art. XXVII was activated, which automatically extends the validity of the last Collective Bargaining Agreement until the parties conclude the approval of a new labor agreement. This de facto determination of the Arbitrator merits our deference. We have not been put in a position to overturn it.

The appellant's inconsistent conduct endorses this assessment. Thus, at the level of arbitration, the appellant challenged the validity of the Collective Bargaining Agreement of 1997 and now maintains before us that said labor contract is in force and that the obligation of payment of the Christmas bonus arises from it.

Having dealt with the question of the arbitrability of the dispute, the Arbitrator determined that El Vocero had failed to comply with its obligation to pay the Christmas Bonus within the time period established in Act No. 148-1969 and that, therefore, it was responsible for the payment of the penalty and of the legal fees established in said statute. This is because it paid the Christmas Bonus, recognized in the Collective Bargaining Agreement, belatedly. In addition, it did not prove to have agreed with its employees to a new date of payment, or to have had the corresponding exemption from the Department of Labor. The Arbitrator further determined that Art. 6 refers to another type of compensation agreed upon by the employer and employees in the Collective Bargaining

Agreement, distinct from those that, like the Christmas Bonus, are required under the legislative mandate. That interpretation is also upheld, as an unarticulated premise, the applicable provisions of the 2006 Regulation.

This interpretation by the Arbitrator, and ratified by the Court of First Instance, of the applicable labor standards merits our deference. Mere errors of judgment on the interpretation of the law do not justify intervention with an arbitration award. [58] Even more so, when in labor law, given its remedial nature, judicial interpretation must be liberal and restorative, and any doubts as to the application of a labor law provision are resolved in favor of the employee. [59]

In the absence of evidence of fraud, improper conduct or violations of due process of law, and there being no errors in the criterion regarding the law, we decline to intervene with the determinations of the Arbitrator. We are of the opinion that with our decision we protect the essence of the arbitration mechanism that is to provide an agile, flexible and economic remedy to restore industrial peace.

-IV-

For the grounds set out above, the judgment appealed is upheld.

It was agreed and sent by the Court and certified by the Secretary of the Court of Appeals.

Dimarie Alicea Lozada, Esq.

Secretary of the Court of Appeals

Footnotes

. 1 Appellant's Appendix, pages. 12–13.

. 2 *Id.*, page 13.

. 3 *Id.*

. 4 *Id.*, pages 12–13.

. 5 *Id.*, pages 14–17.

. 6 *Id.*, page 17.

. 7 *Id.*, page 18.

. 8 *Id.*

. 9 *Id.*, page 110: Factual determination number 4.

. 10 *Id.*, page 110: Factual determination number 5.

. 11 *Id.*, pages 41–50.

. 12 *Id.*, pages 42–43.

. 13 *Id.*, pages 19–24.

. 14 *Id.*, pages 23–24.

. 15 *Id.*, pages 25–40.

. 16 *Id.*, pages 47–48: Factual determination number 6.

. 17 *Id.*, page 49.

. 18 *Id.*, page 50.

. 19 *Id.*, pages 1–10.

. 20 *Id.*, pages 9–10.

. 21 *Id.*, pages 52–65.

. 22 *Id.*, pages 106–113.

. 23 *Id.*, pages 109–110.

. 24 *Id.*, page 112.

. 25 *VDE Corporation v. F & R Contractors,* 180 D.P.R. 21, 32 (2010).

. 26 *Constructora Estelar v. A.E.P.*, Op. de 28 de septiembre de 2011, 2011 T.S.P.R. 139, pág. 23, 183 D.P.R. —— (2011). See also, *Martínez Marrero v. González Droz,* 180 D.P.R. 579, 588 (2010); *S.L.G. Méndez Acevedo v. Nieves Rivera,* 179 D.P.R. 359, 368 (2010); *U.G.T. v. Corp. Difusión Pub.*, 168 D.P.R. 674, 682 (2006).

. 27 *Dept. de Educación v. Díaz Maldonado,* Op. de 2 de noviembre de 2011, 2011 T.S.P.R. 161, pág. 7, 183 D.P.R. —— (2011). See also, *U.G.T. v. Corp. Difusión Pub.*, 168 D.P.R. 674, 682 (2006).

. 28 *Id.*

. 29 *VDE Corporation v. F & R Contractors, supra.* See also, *Rivera v. Samaritano & Co., Inc.*, 108 D.P.R. 604, 608 (1979); *S.L.G. Méndez Acevedo v. Nieves Rivera, supra.*

. 30 *Rivera v. Samaritano & Co., Inc., supra,* page 608.

. 31 *Id.*

. 32 *U.I.L. de Ponce v. Dest. Serrallés, Inc.*, 116 D.P.R. 348, 354 (1985). See also, *VDE Corporation v. F & R Contractors, supra,* page 45.

. 33 *U.I.L. de Ponce v. Dest. Serrallés, Inc., supra,* page 354.

. 34 *Constructora Estelar v. A.E.P., supra,* page 20. See also, *U.I.L. de Ponce v. Dest. Serrallés, Inc., supra,* pages 354–355.

. 35 J.R.T. *v. Otis Elevator Co.*, 105 D.P.R. 195, 199–200 (1976).

. 36 *Id.* See also, *Dept. de Educación v. Díaz Maldonado, supra,* page 7.

. 37 *Constructora Estelar v. AEP, supra,* page 25. See also, *U.I.L. de Ponce v. Dest. Serrallés, Inc., supra,* pages 353–354.

. 38 *Constructora Estelar v. A.E.P., supra,* page 26. See also, *Dept. de Educación v. Díaz Maldonado, supra,* pages 7–8; *Condado Plaza v. Asoc. Emp. Casinos P.R.*, 149 D.P.R. 347, 353 (1999).

. 39 *Constructora Estelar v. A.E.P., supra,* page 26. See also, *Rivera v. Samaritano & Co., Inc., supra,* page 609.

. 40 *Constructora Estelar v. A.E.P., supra,* page 27. We find it pertinent to note that the Commercial Arbitration Law does not apply to arbitration agreements that arise between employers and employees, since these are regulated by the Puerto Rico Labor Relations Act, Act No. 130 of May 8, 1945, as amended, 29 LPRA Sec. 61, et seq. Notwithstanding the foregoing, the Supreme Court of Puerto Rico, in analyzing disputes over commercial arbitration awards, has referred to the interpretative jurisprudence of labor-management arbitration awards.

. 41 *Id.*

. 42 *Constructora Estelar v. AEP, supra,* page 26. See also, *J.R.T. v. Otis Elevator Co., supra,* pages 199–200.

. 43 *Rivera v. Samaritano & Co., Inc., supra,* page 609.

. 44 29 L.P.R.A. sec. 501 *et seq.* See also, *Keystone Collection Service, Inc. v. Recio,* 389 F.Supp. 164 (1975); L. Pabón–Roca, *The Christmas Bonus: Guide for the Employer,* Puerto Rico, Impress Quality Printing, page 10, footnote number 1.

. 45 Art. 1 of Law No. 148–1969, 29 L.P.R.A. sec. 501.

. 46 Art. 2 of Law No. 148–1969, 29 L.P.R.A. sec. 502.

. 47 *Id.*

. 48 *Id.*

. 49 Art. 5 of Law No. 148–1969, 29 L.P.R.A. sec. 505.

. 50 Art. 7 of Law No. 148–1969, 29 L.P.R.A. sec. 507.

. 51 At the time of the controversy that gave rise to the case before us, the 2006 Regulation was in force. Subsequently, said regulation was repealed by the current Regulation No. 7904, known as the *Regulation of the Secretary of Labor and Human Resources to Administer Act No. 148 of June 30, 1969, as amended, known as the Christmas Bonus Act in the Private Enterprise, Third Revision (2010).*

. 52 Art. 2 del *Regulation of the Secretary of Labor and Human Resources to Administer Act No. 148 of June 30, 1969, as amended, Second Revision (2006),* hereinafter 2006 Regulations.

. 53 *Id.*

. 54 Art. 3 of the 2006 Regulation.

. 55 Art. 5 of the 2006 Regulation.

. 56 Art. 6 of the 2006 Regulation.

. 57 *Id.*

. 58 *Febus y otros v. MARPE Const. Corp.,* 135 D.P.R. 206, 217 (1994).

. 59 *Orsini García v. Méndez,* 177 D.P.R. 596, 614–615 (2009). The Appellant does not support his radical interpretation of Act No. 148-1969 – that in cases where the parties have established the Christmas bonus in the Collective Bargaining Agreement, the remedy does not apply - in any authority. In addition, an interpretation that could favor him, considers that in cases of Collective Bargaining Agreements, Act No. 148-1969 applies additionally, and that as for the payment of the bonus in cases of economic problems of

the employer "would have to resort to the language of the agreement", which in the case before our consideration establishes the adjudication of disputes through the remedy of recourse to arbitration, which was precisely what happened in this case. See, L. Pabón Roca, op. Cit., P. 20-21 and 46.